



Town of Carlisle

MASSACHUSETTS 01741

Office of

PLANNING BOARD

P.O. BOX 827
CARLISLE, MA 01741
(508) 369-9702

MINUTES

July 7, 1997

PUBLIC HEARING: Petition of Kay Fairweather to remove trees within the right-of-way of School Street, a Scenic Road

CONTINUED PUBLIC HEARING: Definitive Subdivisions Plan for Hunters Run (off Nickles La. and Oak Knoll Rd.). Brian E. Hebb Builders, Inc., applicant.

DISCUSSION:

Report on completion of Ice Pond Subdivision

Request for discussion of mechanism to secure performance guarantee for completion of Tall Pines Subdivision prior to release of last 10 lots from covenant (Costello)

Request for discussion of condition of Accessory Apartment Special Permit for 45 Pine Brook Road requiring a landscape screen of hemlocks (Hardy)

Chair Yanofsky called the meeting to order at 7:20 p.m.. Members Duscha, Epstein, Hengeveld, Abend were present. Also present was Planning Administrator George Mansfield. Member LaLiberte joined the meeting at 7:35 p.m. and member Tice was not present this evening.

The minutes of the meeting of June 9, 1997 were reviewed and amended as follows: 1) On page 2, paragraph 1, "School Committee" should to be capitalized; 2) On page 3, paragraph 1, change "coming in" to "making inquiries;" 3) Page 3, paragraph 2, change "grant" to "Municipal Incentives Grant, (MIG);" 4) Page 6, paragraph 2, change "grading" to "elevation;" 5) Page 9, paragraph 9, change "Ford" to "Senkler;" 6) Page 10, paragraph 8, change "expertise" to "experience", 7) Page 11, paragraph 5, change "advertising" to

"public education." Hengeveld moved to accept the minutes as amended. Abend seconded and the minutes were approved 5-0.

With regard to **budget** items, Yanofsky noted Tice's memo to Fin.Com. requesting a transfer from the Reserve Fund. Since Tice may be unable to attend Fin.Com.'s meeting on July 10, 1997, Yanofsky will contact Fin.Com. and try to attend their meeting if necessary.

The board then reviewed the job description of the Secretary/Recorder. Hengeveld requested that a statement be added to have the minutes prepared by the next meeting. Mansfield noted that this is not always possible, especially when there are special meetings. It was therefore agreed to add the phrase "in a timely manner" after "... minutes for board approval." Epstein wished to add a statement that this position is also accountable to the Planning Board rather than just the Planning Administrator. Yanofsky said that authority should be limited and one person should be responsible for overseeing that position. Epstein wished to discuss this issue at another time.

Yanofsky stated that in the past the board had a PA who was overwhelmed by the many requests made by the PB. Then there was an unwritten policy that inquiries would be channeled through the chair and she feels the board should continue to work in this fashion.

(LaLiberte arrived.)

Duscha said she would like to be able to speak directly to the PA and would prefer to have the chair contact individual members if this becomes a problem.

Abend noted that the job description states clearly enough that it provides support to the chairman. Yanofsky said it is a question of the chair knowing what is happening and being aware of what is needed. The board needs to be aware that the PA's working hours are often spent servicing the board. The PA should be able to work with the board as a team, but the PA should not have seven bosses. Duscha was interested in building a team, not a hierarchy.

LaLiberte felt Yanofsky's suggestion would be impractical. If necessary, the board can prioritize for the PA. He did not wish to have another hurdle in calling the Chair before calling the PA. The PA can address this problem by asking for help prioritizing if necessary.

Yanofsky noted that members could contact the PA directly regarding the Open Space issue since this was agreed on at a meeting. The chair would not turn down a request to call the PA, but needs to know that a particular policy is being discussed. LaLiberte asked what a board member should do if s/he needs to discuss policy that is contrary to the views of the Chair. Yanofsky assured him that this is not a power issue. She is concerned about controlling the work climate and budget. The PA needs to be doing what the board

wants and not what individuals want. Yanofsky wanted each member to talk to the chair or treasurer if s/he needed to discuss something that would involve significant time or the advice of Town Counsel. Before calling the PA, one must decide if it will cost the board money and if it is significant.

LaLiberte noted that most of the board has been operating differently. Yanofsky said this is precisely why she brought up the issue. She felt it necessary to manage this before it became a problem. The previous PA left because of this problem.

Mansfield assured the board that there is no current issue driving this debate. In the past year and a half he has felt that the interaction between himself and the board has been healthy. He is more concerned about outside requests. In fact, he received one today from another board. Abend offered to follow a set policy for outside boards if this would be helpful. Mansfield said he felt comfortable asking members to talk with the Chair first when necessary. Yanofsky agreed that there has not been a problem yet, she is just looking ahead. She wants to be sure that there is money in the budget. She does not wish to ask the selectmen for more money.

Epstein said that the objectives are fine, but this is a questionable route to take. Working within guidelines would be useful, but a hard fast rule is inappropriate and may result in a withdrawal of participation if all inquiries need to be channeled through the Chair.

Yanofsky did not wish to discourage participation. She is concerned about money being spent and finding out about it later. She also wants to understand what is happening on the board.

Town Counsel, Judith Cutler suggested that in her firm no one may do work unless it is authorized. Her own personal rule, is that if the work is unauthorized, she will give it up to 5 minutes of her attention. If she thinks it will take longer, she will get authorization.

Yanofsky agreed with this idea and left it to Mansfield's judgement. She wanted members to understand her position and to avoid putting the PA in an awkward position later. She wanted to prevent a situation where someone may be uncomfortable later.

Public Hearing: Petition of Kay Fairweather to remove trees within the right-of-way of School Street, a Scenic Road

Present for this hearing was Kay Fairweather of 392 School St.

Mansfield summarized Ms. Fairweather's petition to remove six trees that are either in the right-of-way, or on the boundary. He also presented copies of the Rules and Regs. regarding scenic roads and a memo from Kopelman and Paige dated February 23, 1996. According to these documents, the public shade tree act would actually apply to this

situation requiring the approval of the Tree Warden, Gary Davis, however, Davis has referred this issue to the Planning Board.

Yanofsky asked if the PB actually has jurisdiction. Mansfield said that the public shade tree act also applies and therefore it must be advertised separately and the trees must also be posted. Judith Cutler confirmed that the posting on the trees is required and said that ideally a joint public hearing should be held with the Tree Warden.

Kay Fairweather said she hadn't heard of the Shade Tree Act before and was not sure if these trees qualify. Cutler said that if the trees are in a public right-of-way there must be a Shade Tree public hearing whether or not the tree is on a scenic road.

Fairweather asked who was responsible for posting the trees. When Cutler said it was the Tree Warden, Fairweather noted that he had authorized the PB to make the decision. Cutler said he can not make such authorizations.

Mansfield noted that the trees must be posted seven days prior to the hearing and it must be posted in two other places.

Yanofsky agreed to contact the Tree Warden.

Abend moved to continue the public hearing on July 21, 1997 at 7:30 p.m. and that the Chair will contact the Tree Warden. Duschka seconded. Approved 6-0.

Continued Public Hearing: Definitive Subdivision Plan for Hunters Run (off Nickles La. and Oak Knoll Rd.), Brian E. Hebb Builders, Inc., applicant

Present for this hearing were Brian Hebb and his representatives Lynne Remington and John Boardman of Ross Associates and Paul Alphen of Balas, Alphen & Santos, P.C. Also present were Robert Kydd, JoAnne and David Kelch, Abby Jeffers, Susan and Thomas McAndrew, Karla Johnson, Stewart Roberts, Milan Bedrosian, Ferris Taylor, Beverly and Ed Humm and Laurie Engdahl. LaLiberte was recused from this hearing.

Mansfield opened by giving an update and noting that the plans now before the board have been revised to reflect all comments and suggestions, particularly those made by LandTech. These plans supersede those presented last fall. He also presented additional documents received since the last hearing: 1) Letter from David E. Ross Associates, dated June 11, 1997, requesting a waiver from Subdivision Rules and Regs. section 5.F.4.; 2) Letter from LandTech, dated June 25, 1997, summarizing review of these plans and confirming that comments have been addressed and the plans conform; 3) Letter from Judith Cutler, dated June 16, 1997, advising that the PB does not have authority to require and secure off-site work to protect abutting properties; 4) Letter from Paul Alphen, dated June 30, 1997, proposing a condition of approval on the 8% plan; 5) Letter from Town Counsel, dated July 1, 1997, approving the legal form and character of the above

mentioned condition; 6) Memo from Mansfield entitled "Hunters Run Definitive Subdivision, Possible modifications and conditions to approval;"

Alphen was asked to explain the proposed condition. He said that the underlying purpose was to provide his client with some certainty that if he spent the time preparing the 10% plan he would have some assurance of its approval. If the 8% plan is approved, it would automatically be rescinded unless the 10% plan is submitted within 90 days. If after 60 days of submission of the 10% plan, it is approved without appeal, the 8% plan would automatically be rescinded.

Yanofsky asked if the applicant could appeal the 10% plan. In order to clarify this Mansfield suggested adding "(with exception of the applicant)" after "AND thereafter no appeal is filed," on line 25 of the condition in the Alphen letter.

Alphen again clarified the condition to Yanofsky.

Yanofsky noted that if the 10% plan is disapproved or appealed, then the 8% plan would automatically be approved.

Epstein said that it is important to recognize that if there is an appeal, it may not necessarily solve the problems. The board needs to be comfortable with the 8% plan before placing hope in a 10% plan.

Yanofsky asked Town Counsel if it was also necessary to hold a hearing for the 10% plan, and this was confirmed. Yanofsky also referred to the 90 day and 60 day periods for action in the condition and asked if they could be extended.

Alphen said he had actually proposed short time periods, but was advised by Town Counsel to increase them.

Yanofsky asked what would happen if Hebb should actually begin work before the time allowed. Alphen said this would be grounds for a rescission hearing. Cutler said this would be grounds for an injunction. Epstein suggested adding a condition stating that if work begins, the plan would automatically be rescinded. Alphen said it would be unfair to have an automatic rescission without the opportunity of a hearing. Cutler suggested that a temporary restraining order could be enforced by the police and the courts.

Abend noted that Hebb could actually begin tree removal.

Alphen assured him that that would not occur. The objective is to protect the land and disturb as little as possible.

Yanofsky asked the engineers to incorporate the comments made by Beals and Thomas. Boardman noted that these changes would require additional waivers so they will not be applied to the 8% plan, but will be looked at for the 10% plan.

Duscha asked what the plans were for the intersection at East Street. Boardman said that he was approached by abutters who expressed that it was no longer necessary to deal with this issue.

Epstein asked how the landscape issues raised by the Beals and Thomas letter, dated May 8, 1997, were addressed. Lynn Remington explained that the detention basin has changed and micro pools for pollution attenuation have been added. Mansfield asked if these features appeared on the 8% plan. They were shown on page 8 of 10. Remington explained that the engineers are trying to maintain a setback from the wetlands.

Yanofsky asked how the proposed sidewalks would be made safe. Boardman explained that there are guardrails along the sidewalk (he showed them on the plans) separating the sidewalk from the detention basin. Mansfield asked if the cross section also showed the guardrails. Boardman confirmed that it is not shown on the detail.

Yanofsky noted that the Beals and Thomas letter mentioned the use of fieldstone and a 2 in 1 slope. Boardman explained that this was not considered in order to avoid asking for another waiver.

Epstein asked Boardman to explain the elevations and slopes, which Boardman did showing page 8 of the plans.

Duscha asked how much of the roadway has more than 6 feet of fill. Remington said that most of it does.

Mr. Kelch presented a 3-dimensional model of the 8% plan that he had created.

Duscha asked if Boardman had looked into alternative methods of rock removal. Boardman said that using machinery it is possible to remove 1 to 2 feet of soft ledge. Beyond that depth it is not possible using machinery. He went on to say that modern blasting methods allow the shock to be directed away so that abutters are protected. This project will require blasting.

Tom McAndrew of Nickles Lane asked how high the guardrail is and what the drop-off is to a dry detention basin. Boardman said that the guardrail is a 3' 8" high steel guardrail to be faced with wood to be aesthetically pleasing. Remington said that the detention basin is 3' deep. McAndrews suggested that the 1 1/2" wide board on the guardrail might encourage children to try to balance on it.

Epstein referred to the May 8th Beals and Thomas letter, second page regarding the relocation of the roadway. Boardman said that this also would require a waiver.

Yanofsky asked Boardman to explain the waivers he was requesting, especially Sec. 5.F.4. and LandTech's letter. Boardman explained that the subdivision law states that there can

be no increase in runoff over property lines and peak flow is measured at the property line. The detention basin on Nickles Lane will be used and it is located off site. Flows out of the basin will not be increased. Yanofsky thought that this detention basin was not working properly. Boardman said that he met with Mark Sleger and they conducted tests to determine that the pond is functioning properly.

Epstein asked if any suggestions from the Edes letter have been included. Boardman showed the plan detail and grading at the Kelch drive. Mr. and Mrs. Kelch came forward to look at the plans. Boardman said that he tried to provide specs. that were as close as possible to the Subdivision Rules and Regs. Mrs. Kelch wished that all specs. mentioned in the Edes letter be met.

Hengeveld asked if the selectmen are in agreement with this as a road continuation. Remington said that she had met with the selectmen and they did act positively in this regard. Mansfield said that the Selectmen's secretary confirmed that the Selectmen had approved the road opening permit that would serve the 8% plan, but that they would endorse the 10% plan.

Mrs. Kelch of Oak Knoll Rd. cited Sec. 4.E. of the Subdivision Rules & Regulations and presented a petition signed by 77 residents. It requests the board to disapprove the 8% plan and require the lots in question to be accessed by common drives from existing roads, rather than to create a through road.

Tom McAndrew said that the catch basin at the end of Nickles Lane has been overflowing. He also asked what would happen if Cons. Comm. or one of the other boards appeals the plan under the proposed condition. Yanofsky and Epstein explained that if they disapprove the plan, it is not an appeal and has no effect. What goes on outside of the Planning Board is irrelevant to this covenant. McAndrew asked if he understood correctly that if the Planning Board cannot agree on approving the 10% plan, then the 8% plan is automatically in place. This was confirmed.

Abend wanted to add wording that would include the same conditions that were incorporated in the 8% plan, in the 10% plan.

Mr. Kelch said that given the controversy over these plans, the Certificate of Approval is not a good solution.

Beverly Humm clarified that contrary to Mr. Boardman's understanding, she is against the island in the roadway at East St. and would like it kept the way it is.

Ed Humm expressed concern over the amount of salt needed on the roadway. The development of Nickles Lane resulted in a decline of well water quality. He fears that further development and salt on the roadway will be detrimental to his well.

Kathy Rubinstein said that Nickles Lane is already dangerous and the plan with the island will not ease the situation. She also expressed concern over the blasting and the 30' drop from the guardrail to the detention basin. She felt these changes should not be conceded to.

Ferris Taylor asked if the Board of Health has given approval to this project. Yanofsky explained that they have approved the subdivision, but did express concern over the blasting. Epstein said that the Planning Board does not have jurisdiction over blasting. Mr. Taylor asked why there was no interest in a cul-de-sac with 11 properties as opposed to a through road with 30 homes.

Mrs. Kelch questioned the appeals process and noted that if the 8% plan is approved and not appealed, then a 10% plan might be presented and that may or may not be accepted. Abend explained that the 8% plan may be appealed if there are sufficient legal grounds. Epstein explained that the covenant is actually a help rather than a hindrance to the board. Alphen agreed.

Hebb noted that there is a major incentive for him to go forward with the 10% plan and that is the bottom line.

Abend **moved to close the public hearing.** Hengeveld seconded. 5-0-1 with LaLiberte recused.

Duscha expressed concern over the waiver from Sec. 5.F.4. and that the town be burdened with responsibility for this off-site drainage. Abend understood that the detention basin could be placed within the site. Duscha said she has a general concern over drainage maintenance.

Duscha noted that the other waivers are reasonable requests. She still felt that the Nickles Lane and East Street intersection was unsafe. She also wanted to be able to monitor the amount of fill going in and be provided with sufficient warning from the developer.

Epstein expressed appreciation to Hebb for working with the board through many meetings. He is still concerned over the safety issues and noted that the purpose of the subdivision law is to protect the safety and health of the community. The terrain of the land in question is difficult. He agreed with the citing of Reg. 4.E. and was uncomfortable with the idea of waiving Sec. 4.A.2.a. He was not in favor of the 8% plan regardless of conditions that might be attached. He advised that if someone did wish to vote for the plan, it should have many conditions attached to it.

Abend said that the developer has met most of the Rules and Regs. with a few waivers. He suggested that the Board may need to modify Rules and Regs. to help meet its goals.

Hengeveld said she was gravely concerned about the safety of this road, especially the drop from the sidewalk, children on the sidewalk and emergency vehicles on the curves.

Abend moved that the board approve the plan that has been submitted for Hunters Run, revised on June 23, 1997 by David E. Ross Associates, including the 3 waivers requested [4.A.2.(a), 3.B.3.a.(2)(b) and 5.F.4.] with certain conditions as follows: 1) That the proponent submit a 10% plan based on the Balas, Alphen & Santos condition with two modifications 1. that the last sentence read "It is expressly understood that if the Certificate of Approval of the 10% plan as well as the within Certificate of Approval is appealed by any party. . ." and 2. that the conditions applied to the 8% plan approval carry over to the 10% plan approval to the extent that site conditions indicate and still are applicable. 2) That the developer provide landscaping in the vicinity of the Kelch driveway, consistent with the existing landscaping, to be approved by the Planning Board prior to endorsement. 3) That the construction hours be as follows: "In addition to the requirements of Art. 8 of the Carlisle General Bylaws, all road construction shall occur between the hours of 7:00 a.m. and 7:00 p.m. on Monday through Friday and between the hours of 9:00 a.m. and 6:00 p.m. on Saturday. No road construction activities shall take place on Sunday or holidays or outside of the times specified above."

Epstein was concerned that there should be more conditions attached if this plan is approved.

Abend asked if the security would also cover the streets leading to the construction site. Cutler explained that the cul-de-sac is bonded but not Nickles Lane. Abend added the following conditions:

4) That any and all damage to Oak Knoll Road and Nickles Lane as a result of construction traffic or activity be repaired, and the roadway be restored to its existing condition. 5) That construction traffic enter and exit via Nickles Lane. 6) That the staging area be within the subdivision for all vehicles.

Motion failed 1-4-1 with LaLiberte recused. (Abend in favor; Duscha, Epstein, Hengeveld and Yanofsky opposed)

Epstein moved to disapprove the Hunters Run definitive subdivision plan revised on June 23, 1997 by David E. Ross Associates for the following reasons: 1) Failure to satisfy Rules and Regs. Sec. 4.A.2(a). 2) Failure to satisfy Rules and Regs. Sec. 4.E. 3) Plan does not meet Sec. 5.F.4. of the Rules and Regs. Hengeveld seconded. Motion passed 4-1-1 with LaLiberte recused. (Duscha, Epstein, Hengeveld and Yanofsky in favor; Abend opposed)

Mansfield will file certificate of disapproval with the Town Clerk by July 15, 1997. Town Counsel advised that the reasons for disapproval should be expanded upon in the final certificate of disapproval.

Request for discussion of condition of Accessory Apartment Special Permit for 45 Pine Brook Road requiring a landscape screen of hemlocks (Hardy)

Mr. Hardy came forward to explain that the hemlocks in question are susceptible to disease, so based on advice from the nursery, the Hardys decided to purchase arbor vitae and plant them close enough to provide the same amount of screening.

Abend noted that arbor vitae are slower growing and less full than hemlocks.

Mansfield said the request to plant trees was not made for aesthetic purposes alone. They must act as a screen to block the view of the additional car that will be in the driveway due to the accessory apartment. Mr. Hardy asked if he could put in a fence since the trees only needed to be 5 feet tall. Duscha noted that a fence would not grow.

Mr. Hardy expressed concern over the likelihood of hemlocks becoming diseased. Abend said that the purpose for specifying Hemlocks was to provide a fast growing screen, and arbor vitae are not fast enough.

Epstein suggested that the Hardy's approach their neighbor to ask them if they felt the arbor vitae is sufficient. Mr. Hardy replied that he would like to resolve this matter quickly since he will be going away, and he would not approach his neighbor. He stated that he will simply plant the hemlocks.

Request for discussion of mechanism to secure performance guarantee for completion of Tall Pines Subdivision prior to release of last 10 lots from covenant (Costello)

Joe March presented the ANR on Tall Pines, Hutchins Road. He explained that Mr. Costello needs a special permit to build a common drive over Lot 3 to serve Lot 2.

Mansfield asked the distance between the two drives on Lot 3, which March said was approximately 150 feet. The ANR shows the full easement. Epstein expressed concern over the distance between the two drives. March said that the purpose of this is to keep the driveway away from the wetlands. March asked for feedback from the board as to whether they felt this plan was appropriate.

Yanofsky said that she would not be inclined to waive Sec.II.F. of the Common Driveways Rules and Regs. There needs to be some kind of maintenance agreement. Duscha said she would prefer to see a common drive servicing both lots. Abend said he would prefer to see at least 75' separating the two drives if a common drive is not feasible.

Mansfield asked if there were plans submitted with this. March said there were, but with little detail. Mansfield said that the ANR needs to be approved within 21 days of

submission and it was already submitted to the town clerk. March decided to withdraw the ANR.

Report on completion of Ice Pond Subdivision

Hebb reported that the bounds have been put in and the as-built field work has been done. It still needs to be plotted. Mansfield asked if the swale had been completed. Hebb said he would contact Sleger to have him see the swale and drill point. Hebb will forward the as-built plan to Sleger and the Board.

Executive Session

Epstein moved to go into executive session to discuss strategy with respect to litigation regarding the appeal by William Costello Realty Trust challenging the validity of Sec. 3.b.9.a of Subdivision Rules and Regs. Hengeveld seconded. Board was polled and unanimously agreed.

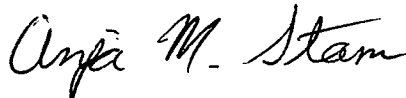
Yanofsky moved to end executive session. The Board was polled and unanimously agreed.

Other Business

The board discussed office space in the new town hall and the possibility of rearranging the furniture in the large meeting room.

Meeting adjourned at 12:05 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Anja M. Stam".

Anja M. Stam
Recording Secretary